

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

NATASHA SMITH and TAMEE BARR,

Plaintiff,

-against-

THE CITY OF NEW YORK, SERGEANT GHALEN OF
THE 101ST NEW YORK CITY POLICE DEPARTMENT
PRECINCT, POLICE OFFICER HASAD BAKSH OF
THE 101ST NEW YORK CITY POLICE DEPARTMENT
PRECINCT, ARRESTING OFFICER ON ARREST
#Q13542273Y, and POLICE OFFICERS JOHN/JANE
DOE 1-10, TRUE IDENTITIES UNKNOWN, SUED IN A
FICTITIOUS CAPACITY INDIVIDUALLY AND AS
POLICE OFFICERS,

Defendants.

To the above named Defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
December 20, 2013

SULLIVAN & BRILL, LLP
Attorneys for Plaintiff



By: Joseph F. Sullivan, Esq.

Trinity Centre
115 Broadway, 17th Floor
New York, New York 10006
(212) 566-1000

Index No.:

Date Purchased:

SUMMONS

Plaintiff designates
Queens County as the
place of trial.

The basis of venue is
the county in which
the cause of action
arose.

Defendant's Addresses:

Corporation Counsel
Michael A. Cardozo
Attorney for The City Of New York
100 Church Street
New York, New York 10007

Sergeant Ghalen Of The 101st
New York City Police Department Precinct
c/o 101st New York City Police Department Precinct
1612 Mott Ave.
Far Rockaway, New York 11691

Police Officer Hasad Baksh
Of The 101st New York City Police Department Precinct
c/o 101st New York City Police Department Precinct
1612 Mott Ave.
Far Rockaway, New York 11691

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

NATASHA SMITH and TAMEE BARR,

Index No.:

Plaintiff,

-against-

**VERIFIED
COMPLAINT**

THE CITY OF NEW YORK, SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, ARRESTING OFFICER ON ARREST #Q13542273Y, and POLICE OFFICERS JOHN/JANE DOE 1-10, TRUE IDENTITIES UNKNOWN, SUED IN A FICTITIOUS CAPACITY INDIVIDUALLY AND AS POLICE OFFICERS,

Defendants.

Plaintiffs, NATASHA SMITH and TAMEE BARR, by their attorneys, SULLIVAN & BRILL, LLP, complaining of the Defendants, alleges:

1. Plaintiffs NATASHA SMITH and TAMEE BARR were and are residents of the County of Queens, State of New York.

2. At all times hereinafter mentioned, the Defendant, THE CITY OF NEW YORK, was and still is a municipal corporation organized and existing under the laws of the State of New York.

3. On or about September 19, 2013, the Plaintiffs served a Notice of Claim in writing upon THE CITY OF NEW YORK.

4. THE CITY OF NEW YORK acknowledged receipt of the Notice of Claim by stamp dated September 19, 2013.

5. At least thirty (30) days have elapsed since the service of the Notice of Claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one (1) year and ninety (90) days after the happening of the event upon which the claims are based.

6 The Plaintiffs have complied with the request of the municipal defendants for an oral examination pursuant to Section 50-h of the General Municipal law by testifying at a 50-h hearing on November 22, 2013.

7. On July 13, 2013 and currently the Plaintiff NATASHA SMITH resides at 5610 Beach Channel Dr., Apt. 7E, Queens, NY 11692.

8. On July 13, 2013 and currently the Plaintiff TAMEE BARR resides at 364 Beach 56th Street, Apt. 2C, Queens, NY 11692.

9. At all times mentioned hereinafter, THE CITY OF NEW YORK, its agents, servants, and employees operated, maintained and controlled the New York City Police Department hereinafter referred to as "NYPD", including all the police officers and employees thereof.

10. SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, and ARRESTING OFFICER ON ARREST #Q13542273Y were and are police officers employed by THE CITY OF NEW YORK and at all times herein were acting in such capacity as the agents, servants, and/or employees of THE CITY OF NEW YORK within the scope of their employment and under the direction of THE CITY OF NEW YORK

and the NYPD.

11. SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, and ARRESTING OFFICER ON ARREST #Q13542273Y were and are employed by THE CITY OF NEW YORK and at all times herein were acting in such capacity as the agents, servants, and/or employees of THE CITY OF NEW YORK within the scope of their employment and under the direction of THE CITY OF NEW YORK and the NYPD.

12. At all times hereinafter mentioned and specifically on or about July 13, 2013 at approximately 10:30 PM (hereinafter “date of incident”) at or near the location of the 56-10 Beach Channel Dr., Queens, New York, Queens County, State of New York (hereinafter “location of incident”), the defendants SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, and ARRESTING OFFICER ON ARREST #Q13542273Y, individually and collectively were acting within the scope of their employment and under the direction of THE CITY OF NEW YORK and the NYPD as their agents, servants, and/or employees. Consequently, THE CITY OF NEW YORK is liable under the doctrine of *respondeat superior* for the officers’ tortious actions.

13. On or about the date of incident and at all relevant times hereunder, the defendants SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST

NEW YORK CITY POLICE DEPARTMENT PRECINCT, and ARRESTING OFFICER ON ARREST #Q13542273Y acted as police officers and were required to follow the rules and regulations as contained in the NYPD Patrol Guidelines.

14. On the date of incident SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, and ARRESTING OFFICER ON ARREST #Q13542273Y were present at the vicinity of the location of the incident.

15. On the date of incident at the location of incident, the Plaintiffs were wrongfully touched, grabbed, assaulted, searched, handcuffed, seized, and arrested by THE CITY OF NEW YORK police officers under arrest number Q13542273Y without an arrest warrant or search warrant.

16. The Plaintiffs were criminally processed and fingerprinted and held until July 15, 2013. At some time on July 14, 2013, the Plaintiffs were transported by THE CITY OF NEW YORK employees to Queens Central Booking.

17. The Plaintiffs did not see a criminal court judge until July 15, 2013 at approximately 1:00 AM.

18. On July 15, 2013, the Plaintiffs were arraigned on the charges of obstruction of governmental administration and resisting arrest.

19. On July 15, 2013, the Plaintiffs were arraigned and released on their own recognizances.

20. The Plaintiffs were appointed legal counsel to defend against the false charges.

21. The Plaintiffs were subsequently compelled to appear in criminal court numerous times. The

22. As of December 17, 2013, the charges against the Plaintiffs are still pending.

23. The Plaintiffs are innocent of all charges and have committed no crime.

AS AND FOR A FIRST CAUSE OF ACTION FOR FALSE IMPRISONMENT

24. The Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs marked “1” through “23” with the same force and effect as if more fully and at length set forth herein.

25. That beginning on the date of incident at the location of incident, the defendants, and their agents, servants, and/or employees intentionally handcuffed and imprisoned the Plaintiffs, without any just cause, and held them against their will until they were arraigned and released on their own recognizance.

26. That the Plaintiffs were falsely imprisoned and remained imprisoned while locked in a cell at the police precinct, transported in police vehicles, and held at Queens Central Booking, by the defendants, their agents, servants and/or employees.

27. That said imprisonment was caused by the defendants, their agents, servant, and/or employees, without any warrant or other legal process and without authority of the law and without any reasonable grounds, or cause to believe that the Plaintiffs were guilty of any crimes, or that the defendants had just cause to imprison the Plaintiffs.

28. The Plaintiffs were wholly innocent of any crime and did not contribute in any way or manner to their imprisonments by the defendants, their agents, servants, and/or employees and were forced to submit to the aforesaid imprisonment entirely against their will.

29. That the defendants, their agents, servants, and/or employees, as set forth above, intended to confine the Plaintiffs; the Plaintiffs were conscious of the confinement; the Plaintiffs did not consent to the confinement; and the confinement was not otherwise privileged.

30. That by reason of the aforesaid false imprisonment and detention of the Plaintiffs, their freedom was restricted, they were subjected to great indignity, humiliation, pain and great distress of mind and body.

31. That by reason of the aforesaid, the Plaintiffs have been damaged in a sum exceeding the jurisdictional limits of the lower courts.

AS AND FOR A SECOND CAUSE OF ACTION FOR FALSE ARREST

32. The Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs marked “1” through “31” with the same force and effect as if more fully and at length set forth herein.

33. That beginning on the date of incident and at the location of incident, the defendants, and their agents, servants, and/or employees arrested the Plaintiffs.

34. That said arrest was caused by the defendants, their agents, servants, and/or employees, without any warrant or other legal process and without authority of the law and without any reasonable grounds, or cause to believe that the

Plaintiffs were guilty of such crimes, or that the defendants had just cause to arrest the Plaintiffs.

35. The Plaintiffs were wholly innocent of any crime and did not contribute in any way or manner to their arrests by the defendants, their agents, servants, and/or employees and were forced to submit to the aforesaid arrest entirely against their will.

36. That the defendants, their agents, servants, and/or employees, as set forth above, intended to arrest and confine the Plaintiffs; the Plaintiffs were conscious of the arrest and confinement; the Plaintiffs did not consent to the arrest or confinement; and the arrests and subsequent confinement were not otherwise privileged.

37. That by reason of the aforesaid false arrest and detention of the Plaintiffs, they were imprisoned and subjected to great indignity, humiliation, pain and great distress of mind and body.

38. That by reason of the aforesaid, the Plaintiffs have been damaged in a sum exceeding the jurisdictional limits of the lower courts.

AS AND FOR A THIRD CAUSE OF ACTION FOR MALICIOUS PROSECUTION

39. The Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs marked “1” through “38” with the same force and effect as if more fully and at length set forth herein.

40. On the date of incident and from that time until all charges are dismissed against the Plaintiffs, which will be favorable terminations for the accused, defendants deliberately and maliciously are prosecuting the Plaintiffs

without any probable cause, by filing or causing a felony complaint to be filed in the Criminal Court of the City of New York, Queens County, for the purpose of falsely accusing the Plaintiffs of violations of the criminal laws of the State of New York.

41. The defendants, jointly and severally, their agents, servants, and/or employees failed to take reasonable steps to stop the prosecution of the Plaintiffs and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiffs and due to the absence of probable cause malice can be inferred.

42. The commencement of these criminal proceedings was malicious and began in malice and without probable cause, so that the proceedings could succeed by the defendants.

43. As a result of the malicious prosecution, Plaintiffs were deprived of their liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution.

44. That by reason of the aforesaid, the Plaintiffs have been damaged in a sum exceeding the jurisdictional limits of the lower courts.

AS AND FOR A FOURTH CAUSE OF ACTION FOR ASSAULT AND BATTERY

45. The Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs marked "1" through "44" with the same force and effect as if more fully and at length set forth herein.

46. That on the date of incident and at the location of incident, the Plaintiffs were assaulted and battered.

47. The defendants, through its agents, servants, and/or employees, while acting within the scope of their employment handcuffed, arrested, punched, struck, dragged, pulled, forced to the ground, photographed, and fingerprinted the Plaintiffs.

48. The defendants, through its agents, servants, and/or employees, had no reason or just cause to assault and batter the Plaintiffs. Said conduct was without the Plaintiffs' consent or permission, and was far in excess of any force necessary to effect the Plaintiffs' arrest and/or control them.

49. That the defendants, their agents, servants and/or employees, acting as agents of behalf of THE CITY OF NEW YORK, within the scope of their employment, intentionally, willfully, and/or maliciously assaulted and battered the Plaintiffs, in that they had the ability to cause imminent harmful or offensive bodily contact and intentionally did an act which threatened to and did cause such contact to the plaintiff. That said acts caused apprehension of such offensive contact to the Plaintiffs, when officers in a hostile and/or offensive manner touched the Plaintiffs without their consents and with the intent of offensive bodily contact to the Plaintiffs.

50. That THE CITY OF NEW YORK is liable for the actions of its employees, including the above named agents, servants, and/or employees for conduct committed within the scope of their employment.

51. That by reason of the aforesaid intentional assault and battery, the Plaintiffs suffered and still continue to suffer from physical injuries and emotional injuries to their mind, and suffered conscious pain and suffering.

52. That by reason of the aforesaid, the Plaintiffs have been damaged in a sum exceeding the jurisdictional limits of the lower courts.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST THE DEFENDANT CITY
OF NEW YORK FOR NEGLIGENCE**

53. The Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs marked “1” through “52” with the same force and effect as if more fully and at length set forth herein.

54. That the defendant CITY OF NEW YORK was negligent, careless and reckless in hiring retaining, supervising, promoting, and training its employees, and the officers herein, in that said officers, as employees of the City of New York, were not qualified to be hired, retained, or promoted as police officers and lacked the experience, skill, training, and ability to be employed by the defendant CITY OF NEW YORK.

55. That the defendant CITY OF NEW YORK failed to exercise due care and caution in its hiring, retaining, promoting, and training practices; in that the defendant CITY OF NEW YORK failed to adequately test, analyze test results, and/or investigate said officers’ backgrounds; the CITY OF NEW YORK failed to adequately screen said officers; failed to adequately monitor officers; failed to properly discipline officers who violate the NYPD Patrol Guidelines; failed to properly train and retrain officers; and in that the defendant CITY OF NEW YORK, its agents, servants and/or employees were otherwise careless, negligent, and reckless.

56. That the aforesaid occurrence – an assault and battery, false arrest and imprisonment, malicious prosecution, and the resulting injuries to body and mind, were caused wholly and solely by reason of the negligence or deliberate indifference of the defendant CITY OF NEW YORK, its agents, servants, and/or employees without any negligence on the part of the Plaintiffs contributing thereto.

57. That by reason of the aforesaid, the Plaintiffs have been damaged in a sum exceeding the jurisdictional limits of the lower courts.

**AS AND FOR A SIXTH CAUSE OF ACTION MONELL CLAIM FOR
VIOLATION OF PERSONAL CONSTITUTIONAL RIGHTS UNDER
42 U.S.C. § 1983 AS AGAINST THE CITY OF NEW YORK**

58. The Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs marked “1” through “57” with the same force and effect as if more fully and at length set forth herein.

59. That on the date of incident and the location of incident, the defendant CITY OF NEW YORK, by and through its agents, servants, and/or employees, including the police officers involved, were present as part of their regular and official employment as police officers for the defendant CITY OF NEW YORK and were acting under the color of law and within the scope of their employment.

60. That as the Plaintiffs were lawfully and properly at the subject location, police officers acting as agents, servants and/or employees of the defendant CITY OF NEW YORK seized the Plaintiffs and their property.

61. That as the Plaintiffs were lawfully and properly at the subject location, police officers acting as agents, servants and/or employees of the defendant CITY OF NEW YORK failed to read the Plaintiffs their Miranda rights.

62. That said acts constituted an illegal seizure of the Plaintiffs and deprived them of their rights and liberties as set forth in the Constitutions of the United States and of the State of New York and under 42 U.S.C. § 1983 and 42 U.S.C. § 1986.

63. That said actions violated the Fourth and Fourteenth Amendments to the Constitution of the United States of America, violated Plaintiffs' rights to be secure in their persons, and the defendants used excessive and unlawful force.

64. The Plaintiffs were arrested, handcuffed, and denied access to make a phone call.

65. That the defendant CITY OF NEW YORK caused, developed, maintained, and/or created a policy and/or custom and/or practice, or decision of a final policymaker, and acted with deliberate indifference to patterns and/or police practices violating constitutional rights of its citizens, which caused the violations of the Plaintiffs' rights, including: falsely arresting individuals without probable cause; improperly holding and/or detaining such individuals without probable cause; excessive and arbitrary use of force; illegal use of police equipment; failing to follow police guidelines; failing to monitor or discipline police misconduct; failing to gather evidence and investigate when allegations of police misconduct are alleged; condoning silence within the police department regarding misconduct; failing to properly supervise, train, investigate, or discipline officers; engaging in a pattern of supervision where all officers are evaluated based upon the number of arrests made; in promoting officers with higher number of arrests; in instituting a policy, custom, and/or practice of arrest quotas and/or productivity goals; falsely swearing out

criminal complaints; profiling and arresting minorities on the basis of race; failing to intervene to prevent the above-mentioned practices.

66. The existence of aforesaid unconstitutional customs, policies, patterns, and/or practices may be inferred from repeated occurrences of similar wrongful conduct, as documented below.

67. The following are instances of an unconstitutional custom, policy, pattern, and/or practice of THE CITY OF NEW YORK and/or the NYPD with respect to a Stop and Frisk program and/or racial profiling and arresting minorities on the basis of race:

a) According to the New York Times in an article dated April 1, 2013, in 2010 Police Commissioner Raymond Kelly meets with then-governor David Paterson and states that young black and Hispanic men were the focus of stop and frisks to “instill fear in them, every time they leave their home they could be stopped by the police.”

b) In a class action lawsuit David Floyd, et al. v. City of New York, et al., 08 CV-1034 (S.D.N.Y.), in a decision filed August 12, 2013, Justice Scheindlin found the City of New York liable for violating plaintiffs’ Fourth and Fourteenth Amendment rights, acting with deliberate indifference toward the NYPD’s practice of making unconstitutional stops and adopting a policy of indirect racial profiling. The result of these practices was found to be disproportionate and discriminatory stopping of black and Hispanics in violation of the Equal Protection Clause. Justice Scheindlin concluded that the City of New York’s highest officials turned a blind eye to the evidence that officers are conducting stops in a racially discriminatory

manner. Justice Sheindlin ordered that NYPD police officers are not permitted to target people for stops based on their race.

68. The following are instances of an unconstitutional custom, policy, pattern, and/or practice of THE CITY OF NEW YORK and/or the NYPD with respect to arrest quotas:

a) Schoolcraft v. City of New York, 10-CV-6005 (RWS) (S.D.N.Y.): police officer alleges that he was arrested and committed to a psychiatric facility in retaliation for exposing an NYPD police precinct's policies and practices of summons and arrest quotas, falsifying evidence, and perjury.

b) In a class action lawsuit David Floyd, et al. v. City of New York, et al., 08 CV-1034 (S.D.N.Y.), in a decision filed August 12, 2013, Justice Sheindlin found that in a Police Officer Performance Objectives Operation Order dated October 17, 2011, Commission Raymond Kelly directed that "Department managers can and must set performance goals - relating to "the issuance of summons, the stopping and questioning of suspicious individuals and the arrests of criminals . . . Uniformed members who do not demonstrate activities . . . or who fail to engage in proactive activities . . . will be evaluated accordingly and their assignments reassessed." Justice Scheindlin also cited the deposition testimony of Police Officer Adhyl Polanco of the 41st precinct, stating that commanding officers set quotas for arrest.

c) Bryant v. City of New York, 22011/2007 (Sup. Ct., Kings Co.): jury finds that NYPD officers acted pursuant to a City policy regarding the number of arrests officers were expected to make.

d) The New York City Office of Collective Bargaining concluded that police officers in Brooklyn's 75th Precinct were required to issue four parking tickets, three moving violation citations, three "quality-of-life" summonses, make one arrest and two stop-and-frisks each month. Arbitrator Bonnie Siber Weinstock found that the NYPD maintained a "summons quota for traffic violations in the precinct and penaliz[ed] officers for failing to meet the stated number of traffic citations." She ordered the city to cease and desist from the practice.

69. The following are instances of an unconstitutional custom, policy, pattern, and/or practice of THE CITY OF NEW YORK and/or the NYPD with respect to falsifying police records and evidence, committing perjury, and negligent hiring, training, retention, and disciplining and/or failing to respond to evidence of corruption:

a) In New York County Supreme Court People v. William Eiseman (Ind. No. 2999-2010), NYPD Sergeant William Eiseman pled guilty to perjury and falsifying police records, "admit[ing] to faking a marijuana case against one man and cocaine-related charges against another – and training young [officers] to falsify paperwork to sidestep legal safeguards." Supreme Court Justice Juan Merchan commented that Sgt. Eiseman's admissions "paint a picture of a police officer who has challenged and undermined the integrity of the entire system we have here."

b) In late 2009, a former NYPD officer in the Bronx, Pedro Corniel, was charged with perjury for claiming to have caught a burglar "red-handed," when, in fact, two other officers had made the arrest and handed the arrest off to Mr. Corniel. The suspect was released.

c) Lin v. City of New York, 09-CV-1936 (PGG) (S.D.N.Y.): officers arrest person for photographing an arrest of a bicyclist and sign criminal complaint with facts contradicted by video evidence.

d) Colon v. City of New York, 09-CV-0008 (E.D.N.Y.) Order dated November 25, 2009, denying THE CITY OF NEW YORK'S motion to dismiss on Iqbal grounds in case where police officers were fired and prosecuted for falsifying evidence in a an alleged buy and bust operation, the Honorable District Court Judge Weinstein wrote: "Informal inquiry by the court and among the judges of this court, as well as knowledge of cases in other federal and state courts, has revealed anecdotal evidence of repeated, widespread falsification by arresting police officer of the New York City Police Department. Despite numerous inquiries by commissions and strong reported efforts by the present administration – through selection of candidates for the police force stressing academic and other qualifications, serious training to avoid constitutional violations, and strong disciplinary action within the department – there is some evidence of an attitude among officers that is sufficiently widespread to constitute a custom or policy by the city approving illegal conduct of the kind now charged."

e) In response to the Honorable Judge Weinstein's ruling of November 2009 Colon v. City of New York, 09-CV-00008 (E.D.N.Y.), in which he noted a "widespread... custom or policy by the city approving illegal conduct" such as lying under oath and false swearing, NYPD Commissioner Raymond Kelly acknowledged, "When it happens, it's not for personal gain. It's more for convenience."

f) People v. Pogan, 06416-2008 (Sup. Ct., N.Y. Co.): police officer purposefully swore out false complaint and was convicted of falsifying police records.

g) MacNamara v. City of New York, 04-CV-9216 (RJS) (JCF) (S.D.N.Y.): court ordered THE CITY OF NEW YORK to disclose all arrest reports related to the arrests of 1,800 people at the 2004 Republican National Convention as evidence of perjured sworn statements by police officers to cover-up false arrests.

h) Powers v. City of New York, 04-CV-2246 (NGG), 2007 U.S. Dist. LEXIS 27704 (E.D.N.Y.): police officer alleges unlawful retaliation by NYPD officers after testifying about corruption within the NYPD.

i) Ariza v. City of New York, 93-CV-5287 (CPS), 1996 U.S. Dist. LEXIS 20250 at*14 (E.D.N.Y.): police officer alleges retaliation and harassment in response to his allegations about a racially-discriminatory workplace. In deciding a motion for summary judgment, the Court held that the police officer had established proof of a policy to retaliate against police officers who expose police misconduct and a failure to train in the police department.

j) The Report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (“Mollen Commission Report”), dated July 7, 1994, states: “In the face of this problem [of corruption], the [NYPD] allowed its systems for fighting corruption virtually to collapse. It has become more concerned about the bad publicity that corruption disclosures generate than the devastating consequences of corruption itself. As a result, its corruption control minimized, ignored and at times concealed corruption rather than root it out. Such an institutional reluctance to uncover corruption is not

surprising. No institution wants its reputations tainted especially a Department that needs the public's confidence and partnership to be effective. A weak and poorly resourced anti-corruption apparatus minimizes the likelihood of such taint, embarrassment and potential harm to careers. Thus there is a strong institutional incentive to allow corruption efforts to fray and lose priority which is exactly what the Commission uncovered. This reluctance manifested itself in every component of the Department's corruption controls from command accountability and supervision, to investigations, police culture, training and recruitment. For at least the past decade, the system designed to protect the Department from corruption minimized the likelihood of uncovering it."

k) The Mollen Commission concluded that police perjury and falsification of official records is probably the most common form of police corruption facing the criminal justice system. It concluded: "Regardless of the motives behind police falsifications, what is particularly troublesome about this practice is that it is widely tolerated by corrupt and honest officers alike, as well as their supervisors. Corrupt and honest officers told us that their supervisors knew or should have known about falsified versions of searches and arrests and never questioned them . . . What breeds this tolerance is a deep-rooted perception among many officers of all ranks within the Department that nothing is really wrong with compromising facts to fight crime in the real world. Simply put, despite the devastating consequences of police falsifications, there is a persistent belief among many officers that it is necessary and justifies, even if unlawful. As one dedicated officer put it, police officers often view falsification as, to use his words, "doing God's work" – doing

whatever it takes to get a suspected criminal off the streets. This attitude is so entrenched, especially in high-crime precincts, that when investigators confronted one recently arrested officer with evidence of perjury, he asked in disbelief, "What's wrong with that? They're guilty."

70. The defendants' actions on the date of incident were performed under the color of the policies, statutes, ordinances, rules, and regulations of the CITY OF NEW YORK.

71. That the Plaintiffs did not commit any illegal act, either before or at the time they were falsely arrested and imprisoned, assaulted, battered, and deprived of their constitutional rights as set forth in the Constitution of the United States, particularly 42 U.S.C. § 1983 and the Constitution of the State of New York.

72. That by reason of the aforesaid, the Plaintiffs were injured in mind.

73. That by reason of the aforesaid, the Plaintiffs have been damaged in a sum exceeding the jurisdictional limits of the lower court and seeks punitive damages, costs, attorneys' fees, and expert fees as provided by 42 U.S.C. § 1988, and such other relief as the court may deem just and proper.

AS AND FOR A SEVENTH CAUSE OF ACTION FOR VIOLATION OF CONSTITUTIONAL RIGHTS UNDER 42 U.S.C. § 1983 AS AGAINST SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, ARRESTING OFFICER ON ARREST #Q13542273Y, AS AGENTS, SERVANTS, AND/OR EMPLOYEES OF THE CITY OF NEW YORK

74. The Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs marked “1” through “73” with the same force and effect as if more fully and at length set forth herein.

75. That at all times hereinafter mentioned, the defendants SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, ARRESTING OFFICER ON ARREST #Q13542273Y, were each employed by the defendant CITY OF NEW YORK and/or the NYPD and were acting under the color of their official capacities and their acts were performed under the color of the policies, statutes, ordinances, rules, and regulations of the City of New York.

76. That at all times hereinafter mentioned, the defendant officers were acting pursuant to orders and directives from the defendant CITY OF NEW YORK.

77. That during all times hereinafter mentioned, the defendant officers acted under color and pretense of law, to wit: under color of the statutes, ordinances, regulations, customs and usages of THE CITY OF NEW YORK and/or the New York City Police Department and that the defendant officers were acting under the color and pretense of law and engaged in the illegal conduct set forth in this complaint to the injury of the plaintiff and deprived him of the rights, privileges, and immunities secured to him by the First, Fourth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States, the laws of the United States, the Constitution of the State of New York, the laws of the State of New York, and 42 U.S.C. § 1983 and 42 U.S.C. § 1986.

78. That the unlawful and illegal conduct of the defendant officers SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, ARRESTING OFFICER ON ARREST #Q13542273Y deprived the Plaintiffs of the following rights, privileges, and immunities secured to them by the Constitution of the United States and of the State of New York:

a) The right of the Plaintiffs to be secure in their person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States;

b) The right of the Plaintiffs not to be deprived of life, liberty, or property without due process of law, and the right to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States;

c) The right to have freedom of speech;

d) The right to be free from cruel and unusual punishment;

e) The right to due process of law.

79. That by reason of the aforesaid violations, use of force, seizure of Plaintiffs' persons, their false arrest and false imprisonment, assault and battery, falsifying evidence, and malicious prosecution, the defendant officers involved in the arrest and prosecution of the Plaintiffs, violated the Plaintiffs' rights and privileges as provided to them in the Constitution of the United States of America and the Constitution of the State of New York, and laws thereto. The defendant officers and

THE CITY OF NEW YORK under the doctrine of *respondeat superior*, violated 42 U.S.C. § 1983.

80. That as a proximate result of the defendants' actions, the Plaintiffs were subjected to great indignities and humiliation, and pain and distress of mind and body.

81. That by reason of the aforesaid, the Plaintiffs were injured in mind and body, still suffer and upon information and belief, will continue to suffer great physical and mental pain.

82. That by reason of the aforesaid, the Plaintiffs have been damaged in a sum exceeding the jurisdiction of the lower courts and seeks compensatory damages, plus punitive damages, costs, attorneys' fees, expert fees, as set forth and provided by 42 § U.S.C. 1988, and such other relief as the court may deem just and proper.

AS AND FOR AN EIGHTH CAUSE OF ACTION FOR VIOLATION OF CONSTITUTIONAL RIGHTS UNDER 42 U.S.C. § 1983 AS AGAINST SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, ARRESTING OFFICER ON ARREST #Q13542273Y FOR FAILURE TO INTERVENE

83. That Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs marked "1" through "82" with the same force and effect as if more fully and at length set forth herein.

84. Members of the NYPD have an affirmative duty to assess the constitutionality of interactions between their fellow members of service and civilians and to intervene where they observe or have knowledge that another member of the NYPD or other law enforcement agency violated a civilian's constitutional right(s).

85. The officer-defendants witnessed and/or had knowledge of SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, ARRESTING OFFICER ON ARREST #Q13542273Y's unlawful and/or unconstitutional arrests of the Plaintiffs. Both the arrest of and initiation of criminal prosecution against the Plaintiffs were without probable cause or other legal justification and were based on facts known to the officers to be false. However, the defendant officers failed to take any action or make any effort to intervene, halt, or protect the Plaintiffs from being unlawfully, unconstitutionally, and/or wrongfully arrested and prosecuted.

86. That by reason of the aforesaid, the plaintiff was injured in mind and body.

87. That by reason of the aforesaid, the plaintiff has been damaged in a sum exceeding the jurisdictional limits of the lower court and seeks punitive damages, costs, attorneys' fees, and expert fees as provided by 42 U.S.C. § 1988, and such other relief as the court may deem just and proper.

**AS AND FOR AN NINTH CAUSE OF ACTION FOR VIOLATION OF
CONSTITUTIONAL RIGHTS UNDER 42 U.S.C. § 1983 AS AGAINST
SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE
DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF
THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT,
ARRESTING OFFICER ON ARREST #Q13542273Y FOR ABUSE OF
PROCESS**

88. That Plaintiffs repeat, reiterate, and reallege each and every allegation contained in paragraphs marked "1" through "87" with the same force and effect as if more fully and at length set forth herein.

89. By the conduct and actions described above, defendants employed regularly issued process against the Plaintiffs compelling the performance or forbearance of prescribed acts. The purpose of activating the process was intent to harm the Plaintiffs without economic or social excuse or justification, and the defendants were seeking a collateral advantage (namely, the attainment of their productivity goals or arrest quotas) or corresponding detriment to the Plaintiffs, which was outside the legitimate ends of the process. The acts and conduct of the defendants were the direct and proximate cause of injury and damage to the Plaintiffs and violated their statutory and common law rights as guaranteed by the laws and Constitution of the United States of America and the State of New York.

90. That by reason of the aforesaid, the Plaintiffs were injured in mind and body.

91. That by reason of the aforesaid, the Plaintiffs have been damaged in a sum exceeding the jurisdictional limits of the lower court and seeks punitive damages, costs, attorneys' fees, and expert fees as provided by 42 U.S.C. § 1988, and such other relief as the court may deem just and proper.

**AS AND FOR A TENTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS**

92. That plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs marked "1" through "91" with the same force and effect as if more fully and at length set forth herein.

93. That the defendants THE CITY OF NEW YORK, SERGEANT GHALEN OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, POLICE OFFICER HASAD BAKSH OF THE 101ST NEW YORK CITY POLICE DEPARTMENT PRECINCT, ARRESTING OFFICER ON ARREST #Q13542273Y acting in the scope of their employment acted in a manner that exceeded all reasonable bounds of decency with an intent to inflict emotional distress upon the Plaintiffs.

94. That the Plaintiffs sustained emotional distress as a result of the defendant officers' conduct and THE CITY OF NEW YORK under the doctrine of *respondeat superior*.

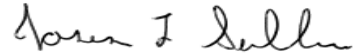
95. That by reason of the aforesaid, the Plaintiffs has been damaged in a sum exceeding the jurisdictional limits of the lower courts.

96. That this action falls within one or more of the exceptions to the limitation of joint and several liability included in Article 16 of the CPLR.

WHEREFORE, the Plaintiff demands judgment against the Defendants in an amount having a present value which exceeds the jurisdictional limit of all lower courts which would otherwise have jurisdiction of this matter, together with interest, costs and disbursements, plus attorney's fees and such other relief as the court deems just and proper.

Dated: New York, New York
December 20, 2013

SULLIVAN & BRILL, LLP
Attorneys for Plaintiff(s)

A handwritten signature in cursive script, appearing to read "Joseph F. Sullivan".

By: Joseph F. Sullivan, Esq.

Trinity Centre
115 Broadway, 17th Floor
New York, New York 10006
(212) 566-1000

ATTORNEY VERIFICATION

State of New York)
) SS.:
County of New York)

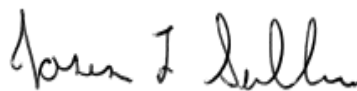
JOSEPH F. SULLIVAN, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirms the truth of the following under the penalty of perjury:

That I am a member of the SULLIVAN & BRILL, LLP the attorneys for the Plaintiff(s) in the above captioned matter. I have read the foregoing Complaint and know the contents thereof to be true to my own knowledge, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

The reason this verification is made by me and not the Plaintiff(s) is that the Plaintiff(s) reside(s) in a county outside of the county where your deponent maintains his office for the practice of law.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: Correspondence and conversations with my client and a review of the file maintained by my office regarding this matter.

Dated: New York, New York
December 20, 2013



By: Joseph F. Sullivan, Esq.